

BEFORE THE BOARD OF CHIROPRACTIC PHYSICIANS

STATE OF IDAHO

In the Matter of the License of:)	
)	Case No. CHI-2008-4
MICHAEL SIMMER, D.C.,)	
License No. CHIA-1105,)	STIPULATION AND
)	CONSENT ORDER
Respondent.)	
_____)	

WHEREAS, information has been received by the Idaho State Board of Chiropractic Physicians (the "Board") that constitutes sufficient grounds for the initiation of an administrative action against Michael Simmer, D.C. ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A. Stipulated Facts and Law

A.1. The Board regulates the practice of chiropractic in the State of Idaho in accordance with title 54, chapter 7, Idaho Code.

A.2. The Board has issued License No. CHIA-1105 to Respondent. Respondent's license is subject to the provisions of title 54, chapter 7, Idaho Code and the Board's rules at IDAPA 24.03.01, *et seq.*

A.3. On or about March 10, 2006, the Arizona Board of Chiropractic Examiners entered a Consent Agreement and Order for Letter of Concern and Probation against Respondent. A true and correct copy of that Consent Agreement entered by the Arizona Board of Chiropractic Examiners is attached as Exhibit A.

A.4. The allegations of Paragraph A.3 constitute grounds for discipline against Respondent's license to practice as a chiropractor in the State of Idaho pursuant to Idaho Code § 54-712(6) (grounds for discipline exist where Respondent's "license to practice

chiropractic has been restricted, revoked or suspended by any other state”).

A.5. This action by the Board is based solely upon the prior discipline imposed on Respondent by the Arizona Board of Chiropractic Examiners, and not upon any new or distinct act or conduct in the State of Idaho.

B. Waiver of Procedural Rights

I, Michael Simmer, D.C., by affixing my signature hereto, acknowledge that:

B.1. I have read, understand and admit the allegations pending before the Board, as stated in Section A, Paragraph A.3. I further understand that these allegations constitute cause for disciplinary action upon my license to practice chiropractic in the State of Idaho.

B.2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to testify myself; the right to reconsideration of the Board’s orders; the right to judicial review of the Board’s orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of chiropractic in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this Stipulation as a resolution of the pending allegations.

B.3. I understand that in signing this Stipulation I am enabling the Board to impose disciplinary action upon my license without further process.

C. Stipulated Discipline

C.1. Respondent shall pay the Board’s attorney fees incurred in this matter in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) within thirty (30) days of the entry of the Board’s Order.

C.2. Within ninety (90) days of the date of entry of the Board’s Order, Respondent shall provide the Board with a letter from the Arizona State Board of Chiropractic Examiners evidencing the status of Respondent’s compliance with the terms of probation in Arizona Board of Chiropractic Examiners Case No. 2006-039. If

Respondent has not satisfactorily completed his probationary requirements in Case No. 2006-039, the Board reserves the right to monitor Respondent's compliance with the probationary requirements and to impose additional discipline if Respondent fails to comply with the terms of probation.

C.3. All costs associated with compliance with the terms of this Stipulation are the sole responsibility of Respondent.

C.4. The violation of any of the terms of this Stipulation by Respondent may warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D. Presentation of Stipulation to Board

D.1. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

D.2. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects the Stipulation, an administrative Complaint may be filed with the Board. Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

D.3. If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph D.2., this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing.

D.4. Except for Paragraph D.2. which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

E. Violation of Stipulation and Consent Order

E.1. If Respondent violates this Stipulation and Consent Order, the violation

shall be considered grounds for additional discipline and the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board to assess whether Respondent has violated this Stipulation and Consent Order. The Chief shall also serve notice of the hearing and charges to Respondent and to Respondent's attorney, if any. Within fourteen (14) days after the notice of the hearing and charges is served, Respondent may submit a response to the allegations. If Respondent does not submit a timely response to the Board, the alleged violations will be deemed admitted.

b. At the hearing, the Board and Respondent may submit evidence and present oral argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation and Consent Order. At the hearing the facts and substantive matters related to the violations described in Section A shall not be at issue.

c. At the hearing, the Board may impose additional discipline, which may include the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and attorney fees incurred by the Board and/or other conditions or limitations upon Respondent's practice.

E.2. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

E.3. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to

specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

DATED this 25 day of MARCH, 2008.

Michael Simmer D.C.
Michael Simmer, D.C.
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 31st day of March, 2008.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By Karl T. Klein
Karl T. Klein
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-707, the foregoing is adopted as the decision of the Board of Chiropractic Physicians in this matter and shall be effective on the 11th day of April, 2008. IT IS SO ORDERED.

IDAHO STATE BOARD
OF CHIROPRACTIC PHYSICIANS

By Shannon Gaertner-Ewing
Shannon Gaertner-Ewing, D.C., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of April, 2008, I caused to be served a true and correct copy of the foregoing by the following method to:

Michael Simmer, D.C.
2545 Lakefork Drive
Eagle, ID 83616

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

J. Kevin West
HALL, FARLEY, OBERRECHT
& BLANTON, P.C.
P.O. Box 1271
Boise, ID 83701

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Karl T. Klein
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail


Tana Cory, Chief
Bureau of Occupational Licenses

IN THE MATTER OF:

**Michael Simmer, D.C.,
Holder of License No. 5897
To Practice Chiropractic
In the State of Arizona,**

Respondent.

RECITALS

2. Respondent understands that he has a right to a public administrative hearing concerning the above-captioned matter at which administrative hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly and voluntarily relinquishes all rights to such an administrative hearing, as well as all

1 rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative
2 and/or judicial action, concerning the matters set forth herein.

3 3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

4 4. Respondent understands that this Consent Agreement or any part of the agreement
5 may be considered in any future disciplinary action by the Board against him.

6 5. Respondent understands that acceptance of this Consent Agreement does not
7 preclude any other agency, subdivision or officer of this State from instituting any other civil or
8 criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

9 6. Respondent understands that this Consent Agreement deals with Board
10 Investigation Case No. 2006-039 involving allegations of unprofessional conduct against
11 Respondent. The investigation into these allegations against Respondent shall be concluded
12 upon the Board's adoption of this Consent Agreement.

13 7. All admissions made by Respondent in this Consent Agreement are made solely
14 for the final disposition of this matter, and any related administrative proceedings or civil
15 litigation involving the Board and Respondent. Therefore, any admissions made by Respondent
16 in this Consent Agreement are not intended for any other use, such as in the context of another
17 regulatory agency's proceedings, or civil or criminal proceedings, whether in the State of
18 Arizona or in any other state or federal court.

19 8. Respondent acknowledges and agrees that, upon signing this Consent Agreement
20 and returning this document to the Board's Executive Director, he may not revoke his acceptance
21 of the Consent Agreement or make any modifications to the document, regardless of whether the
22 Consent Agreement has been issued by the Board's Chairman. Any modification to this original
23 document is ineffective and void unless mutually approved by the parties in writing.
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9. Respondent understands that the foregoing Consent Agreement shall not become effective unless and until adopted by the Board and signed by its Chairman.

10. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, he will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

11. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board, and shall be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

12. Respondent understands that any violation of this Consent Agreement constitutes unprofessional conduct under A.R.S. § 32-924 (A)(16) ([v]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any of the provisions of this chapter or any board order) and may result in disciplinary action under A.R.S. § 32-924.

DATED: 2/16/06


Michael Simmer, D.C.

FINDINGS OF FACT

By stipulation of the parties, this Consent Agreement is entered into for the final disposition of the matters described therein. Respondent admits to the following Findings of Fact:

13. On October 14, 2004, the Board received a complaint against Respondent regarding improper treatment filed by patient J.C. J.C. then withdrew the complaint on

1 December 21, 2004. On October 30, 2005, J. C. once again filed a complaint against Respondent
2 regarding improper treatment. On or about October 31, 2005 J.C. once again filed a request to
3 withdraw her complaint against Respondent. The complaint was not closed, and was forwarded
4 to the Board for review because the complaint investigation had indicated possible violation of
5 the Chiropractic Practice Act.

6
7 14. J.C. was a patient at a clinic where Respondent practiced chiropractic, but she was
8 primarily treated by two other providers. Respondent treated J.C. once on October 22, 2002.

9 15. The investigation disclosed that Respondent had failed to document a cervical
10 manipulation or the spinal segment manipulated although Respondent acknowledges that he did
11 perform a cervical manipulation on J.C. Respondent also billed for an established patient
12 evaluation and management CPT code, therapeutic exercises, and manual therapy without proper
13 documentation of a time component, area of service, or type of treatment. Furthermore,
14 Respondent documented a positive Jackson's test but did not document the actual area of pain
15 that would be indicated by a positive Jackson's test.

16
17 16. The investigation also disclosed that the patient record for J.C. documented
18 contraindications to an osseous adjustment of the cervical area. Respondent admitted before the
19 Board at its meeting of December 8, 2005 that J.C. had informed him that he was not to push a
20 disc into her spinal cord. In addition, the positive Jackson's test noted by Respondent should
21 have alerted him that an osseous adjustment to the cervical area was contraindicated.
22 Nevertheless, Respondent performed an osseous adjustment to the cervical area on J.C. without
23 the patient's informed consent.

24
25 17. Respondent, in his response to the Board and during his appearance before the
26 Board at the December 8, 2005 meeting, stated that he may or may not have reviewed the full

1 patient record for J.C. Respondent's response also states that he uses the Gonstead method of
2 adjustment exclusively.

3 4 CONCLUSIONS OF LAW

5
6 18. Under A.R.S. § 32-900, *et seq.*, the Board possesses jurisdiction over Respondent
7 and this matter.

8 19. The conduct and circumstances described in the above Findings of Fact constitute
9 unprofessional conduct under A.R.S. § 32-924(A)(5) ([u]nprofessional or dishonorable conduct
10 of a character likely to deceive or defraud the public or tending to discredit the profession).

11 20. The conduct and circumstances described in the above Findings of Fact constitute
12 unprofessional conduct under A.A.C. R4-7-902(3) ([f]ailing to create and maintain a patient
13 record that includes the patient's health history, examination findings, diagnostic results, x-ray
14 films if taken, x-ray reports, treatment plan, and notes for each patient visit. The notes for each
15 patient visit shall include the patient's name, the date of service, the chiropractic physician's
16 findings, all services rendered, and the name or initials of the chiropractic physician who
17 provided services to the patient).

18
19 21. The conduct and circumstances described in the above Findings of Fact constitute
20 unprofessional conduct under A.R.S. § 32-924(A)(15) ([a]ny conduct or practice contrary to
21 recognized standards in chiropractic or any conduct or practice that constitutes a danger to the
22 health, welfare or safety of the patient or the public or any conduct, practice or condition that
23 impairs the ability of the licensee to safely and skillfully practice chiropractic).

24 ORDER

1 Based upon the above Findings of Fact and Conclusions of Law, **IT IS HEREBY**
2 **ORDERED:**

3 22. Chiropractic License No. 5897, issued to Respondent to practice chiropractic
4 in the State of Arizona, is issued a **LETTER OF CONCERN** and **PROBATION** for two years
5 for the unprofessional conduct described above.
6

7 23. The terms and conditions of Probation are as follows:

8 a. Within and up to three (3) months from the effective date of this Order,
9 Respondent shall complete six (6) hours of continuing education in chiropractic record keeping
10 that is pre -approved by Board staff and provide Board staff with satisfactory proof of attendance
11 within fifteen (15) days after completing the course(s). The six (6) hours of chiropractic record
12 keeping is in addition to the mandatory hours of continuing education required of Respondent;
13

14 b. Within and up to three (3) months from the effective date of this Order,
15 Respondent shall complete six (6) hours of continuing education in assessment and clinical
16 decision making that is pre-approved by Board staff and provide Board staff with satisfactory
17 proof of attendance within fifteen (15) days after completing the course(s). The six (6) hours of
18 assessment and clinical decision making are in addition to the mandatory hours of continuing
19 education required of Respondent;

20 c. Four (4) months after the effective date of this Order, Respondent shall be
21 subject to a minimum of two (2) chiropractic records audits by Board staff or its designee. The
22 audits shall review records from the effective date of this Order to the date of the audit(s).
23 Respondent shall fully and promptly cooperate with Board staff or its designee during these
24 chiropractic audits and provide whatever assistance or resources they request;
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1 d. Within ten (10) days from the effective date of this Order, Respondent
2 shall personally meet with Board staff to discuss the terms and conditions of his probation and
3 any other matters of concern; and

4 e. Respondent shall bear all direct and indirect costs of complying with this
5 Order.
6

7 24. Respondent may petition the Board for early termination of his probation after
8 one year, provided that he has completed or complied with Paragraphs 23a, 23b, 23c, 23d and
9 23e. Upon petitioning the Board, the Board shall have complete discretion to determine whether
10 Respondent has complied with the required terms and conditions of the Order to grant
11 termination of probation.

12 25. Respondent shall be affirmatively responsible for petitioning the Board to
13 terminate his probation. Respondent's failure to petition the Board to terminate his probation
14 shall cause his probation to continue beyond the two year period until he petitions for
15 termination.
16

17 26. Respondent shall appear in person before the Board to respond to questions or
18 concerns regarding his compliance with this Order when requested by the Board.

19 27. In the event Respondent moves out-of-state or ceases to practice chiropractic in
20 Arizona, he shall notify the Board of these events in writing within twenty (20) days of these
21 events; and the terms and conditions of this Order may be stayed by the Board until Respondent
22 returns to the practice of chiropractic in Arizona.

23 28. Respondent shall obey all federal, state and local laws, rules, and regulations
24 including those governing the practice of chiropractic in this State. Violation of this paragraph,
25
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1 in addition to being considered noncompliant with this Order, shall also be a separate violation of
2 the laws, rules, and regulations governing the practice of chiropractic in this State.

3 29. This Order shall become effective as of the date stated below.

4 DATED this 10 day of MARCH, 2006.

7 ARIZONA STATE BOARD OF
8 CHIROPRACTIC EXAMINERS

8 [SEAL]

9 By 

10 Craig Seitz, D.C., Chairperson
11 Arizona State Board of
Chiropractic Examiners

12 COPY of the foregoing mailed by certified mail this

13 10 day of MARCH, 2006, Certificate No. 200518200009 to:
92022345


14 Michael Simmer, D.C.
15 5418 N Eagle Rd Ste 110
Eagle, Idaho 83616
Respondent

16 COPY of the foregoing mailed this

17 10 day of MARCH, 2006, to the following:

18 Roberto Pulver, Assistant Attorney General
19 1275 W. Washington, CIV/LES
Phoenix, Arizona 85007
20 Attorney for the State

21 Bruce D. Crawford, Esq.
22 1920 E Southern Ave.
Tempe, Arizona 85282-7518
23 Attorney for Respondent

24 
25 Board Operations